



Environmental Sanitation Control

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CRIMINAL prosecution is often necessary to motivate landlords of substandard properties to make required repairs and improvements, to get a reluctant bartender or dishwasher to sanitize utensils properly, to discourage some meat dealers from adding sulfites or excessive fat to hamburger, or to require poultry and animal raisers to practice fly control. Effective execution of this kind of law enforcement requires a fundamental understanding of legal procedures so that prosecution, when necessary, may be successful. In this role, it is our responsibility to prove that a law has been violated; sometimes to show that the law is reasonable, necessary, and just; and to be sure that our means of entry, our procedures for gathering evidence, and our legal steps were all in accordance with established law.

Preventive measures, however, are more desirable than criminal prosecution, and for these we need appropriate laws, regulations, and policies to authorize and establish appropriate administrative controls. To incorporate suitable administrative engineering controls into our programs, we need formal legal authorization and detailed administrative procedures for health department review and approval of permits, licenses, plans, subdivisions, and various proposals. This reduces the necessity of spending time for prosecution to abate nuisances and health hazards resulting from faulty design, location, and planning.

The Public Health Service has supported the trend toward preventive controls in advising States to adopt strong laws to regulate water

supply and sewerage for subdivisions. Already, many city, county, or regional planning agencies refuse to consider approval of subdivisions until the health authority certifies the adequacy of water and sewerage. The Federal Housing Administration refuses to grant mortgage insurance unless the health officer certifies the adequacy of these facilities. Plumbing permits and building permits are often withheld until the health officer gives authorization. In exercising these responsibilities to make a "yes" or "no" decision affecting large and valuable developments, the health authority must be sure not only that procedures are legal but that they are reasonable and just.

This same kind of preventive control is being incorporated into food, milk, and other health programs. Some agencies require health department approval of plans for the construction of food establishments. Some, like the city of Los Angeles, require approval of plans showing in detail how equipment is to be installed and giving evidence that fixed equipment meets sanitation standards. Similarly, health agencies review in detail swimming pool plans for construction, equipment, and installation to ascertain that these will perform the intended function satisfactorily. The health officer has authority to decide whether he will or will not approve plans or a permit. If he disapproves, the applicant must either make the corrections demanded or appeal, if a procedure for appeal is available. Building departments generally recognize the necessity for an appeals procedure, and therefore their codes establish appeals boards and procedures. Unless the health authority establishes comparable procedures, its authority may be challenged in the courts or removed by legislative bodies.

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Approval and Standards

In exercising authority to approve equipment, under what circumstances is it legal and proper for a health authority to require a "seal of approval" from an unofficial sanitation agency such as the National Sanitation Foundation or the "3-A" group to be displayed on such equipment? Generally, when an electrical inspection agency requires the "UL Approval" seal on equipment, it authorizes an alternative method for the applicant to demonstrate that the unit meets electrical safety requirements. Some health authorities do not provide such an alternative. Is a health authority justified in insisting upon a particular seal of approval on a piece of equipment? If so, under what circumstances? If approval of equipment necessitates complex testing, as is true with certain milk-processing equipment, commercial dishwashing machines, hot water generating equipment, commercial refrigerators, plastic pipe, or certain kinds of swimming pool equipment, then perhaps the health authority is justified in insisting on the seal of approval. On the other hand, some health authorities insist on a seal of approval on built-in-place, custom-type counters, which can be checked against standards by field inspection. Is it not advisable, in such cases, for the health authority to require compliance with the national standard but not to insist on the application of the seal of approval on the equipment?

Kinds of Laws

What kinds of health laws should be supported and recommended? One school of thought urges that all laws be written on the performance standard basis. An example is the California State Water Pollution Control Law, which authorizes each Regional Water Pollution Control Board to set discharge requirements in terms of conditions to be maintained in the receiving waters. The legislature, in hearings leading to adoption of this law, clearly stated that it did not wish to authorize any agency to evaluate plans and procedures for meeting these discharge requirements. Water pollution control authorities point with pride to the results being attained by private consulting engineers and businessmen who use their ingenuity to solve their problems. The authori-

ties contend that this procedure is superior to one that requires official review and approval of plans and specifications.

Some regulatory agencies, however, contend that much money may be wasted by building inadequate facilities which checking of plans would reveal. An intermediate approval procedure is that carried out by the Los Angeles County Air Pollution Control District. With few exceptions, the builder of any kind of stationary equipment that could contribute to air pollution must submit plans and satisfy the district that the proposed equipment will work in accordance with established regulations. Under such procedures, if the designer deviates significantly from accepted practices, he must convince the air pollution authority that his design will produce the desired results or be willing to receive conditional approval with the understanding he may later be required to make costly changes.

A third kind of approval is that applied by many agencies in checking plans for swimming pools. Here, precise requirements are specified for such details as depths, bottom slopes, turnover rates, pipe sizes, chlorinators, filters, skimmers, and many other items. It is vital, however, that all these details not be written into laws adopted by a legislature, because to make changes in the law is slow, cumbersome, and sometimes nearly impossible to accomplish. For instance, to change from the longstanding requirement of an overflow or "skum gutter" extending all around a pool to authorizing, as a substitute, "skimmers," which are much cheaper and as effective, would have been nearly impossible if some of our regulations had not been sufficiently flexible to authorize trial installations of skimmers and to permit requirements to be changed by amending administrative regulations. The same flexibility of administrative regulations was important in authorizing the change from sand to diatomite filters and from chlorine to bromine and iodine or other disinfecting agents.

Permits and Grading

Authority to issue, suspend, revoke, or deny a health permit is a most effective legal procedure for the health authority. It means that

the affected citizen must meet whatever requirements the health officer establishes or he cannot obtain a permit. To avoid requiring last-minute and expensive changes in a newly built facility, it is important that our laws, regulations, and policies establish procedures for consultation and review by the health agency prior to the "grand opening," and that regulations establishing minimum standards be published so that the person who must obtain a health permit has ample opportunity to know what requirements must be met.

Permit suspension can result in tremendous financial loss to a permittee, sometimes even complete loss of his business. Too frequently, our codes, as illustrated by the administrative sections of the Public Health Service's Food Service Sanitation Manual—1962, authorize suspension of a permit by the health officer or sanitarian for relatively minor violations or infractions, particularly when written notice had previously been given of the violation. Administrative codes and procedures should spell out precisely the conditions and procedures under which this drastic action may be taken; also, procedures should be detailed for reinstating the permit with a minimum of delay. We should ask our legal advisers whether permit suspension can and should ever be applied as a form of punishment. Some agencies, like the Los Angeles City Health Department, provide that suspension of permits for food establishments is effective at the close of business on the day when suspended, except in case of unusual health hazards. This enables the operator to promptly employ plumbers, painters, exterminators, cleanup crews, or anyone else who may be needed to correct violations. The department is willing to make early-morning or weekend inspections to reinstate suspended permits. Often the operator can correct violations overnight and have his permit reinstated without actually closing his doors during normal business hours.

Some agencies apparently do not attempt to minimize the time during which an establishment must be closed. For instance, we recently received a telephone call from the National Restaurant Association in Chicago. One of the association members from an eastern city was advised by the local health officer that no re-

inspection for permit reinstatement would be made under any circumstances in less than 3 days after he had applied for such reinspection. The association wondered whether it would not be justified in asking for immediate reinspection. Must this kind of decision be left to the health officer or sanitarian, or should this question be covered by code and regulation?

The 1962 edition of the Food Service Sanitation Manual provides that the health officer shall make a reinspection to reinstate a suspended permit within 10 days after receiving written notice that violations have been corrected. Is this, we might ask our legal counsels, a reasonable provision? Can we properly say, "It is not convenient for us to inspect for 10 days, and therefore you must lay off all your employees and your customers must do without your services until it suits our convenience"?

Federal-State-Local Control

What level of government should regulate, inspect, and control? Are we tending toward more Federal control? Are we justified in being concerned if, when we respond to a food-poisoning call, we find Federal authorities are already investigating a local suspected case of botulism? To what extent must the Federal Government get involved in stream pollution control? Even in interstate matters is Federal control always essential? We note the recognition given by the American Society of Civil Engineers to the Ohio River Stream Sanitation Commission as the "Outstanding Civil Engineering Achievement of the Year." We note in *Reader's Digest* that the Ohio River Valley's phenomenal development was, in no small measure, due to the cleanup of the stream, which was accomplished not by Federal control but primarily by interstate cooperation.

How about State programs in place of local controls? When poultry slaughterhouse operators and distributors are faced with problems arising from different and conflicting requirements of local jurisdictions, they promptly go to the State or Federal Government and say, "You take over." Could not more be done than has been done to minimize conflicting local requirements? An example of State standards with local enforcement is the California milk

program wherein the State sets minimum requirements for the dairy farms and milk plants, sets basic minimum requirements for local milk inspectors, and provides overall consultation, supervision, and evaluation. Local enforcement is then carried out by a single local health department assigned by the State to each designated inspection area. This assignment is made, following a hearing provided for by law, on the basis of destination of milk and geographic convenience of inspection agency.

As to the concept of preemption, to what extent should we encourage legislative or constitutional changes to authorize local ordinances to be more specific than State laws? In some States, as in California, when the State appears to have intended to cover a field of legislation, local laws in the same field, even though more strict, are unenforceable. This stifles pioneering by local agencies that could otherwise result in eventual updating of State laws to meet modern requirements and conditions.

Local Area Jurisdiction

With the trend toward county or regional health departments, is it not important that legal authorization be established so that an appropriate local agency may adopt health regulations covering the entire jurisdiction of the county or regional health officer? Where such local legal authority does not exist, the county or regional health department is inclined simply to accept the State law as both minimum and maximum, rather than attempt to persuade many city councils within the health jurisdiction to adopt each new local regulation or ordinance. An example of such authority for areawide regulations is provided in California air pollution legislation. Under this legislation, the county board of supervisors may act as the Air Pollution Control District Board to adopt rules and regulations that are legally applicable in all of the territory, including cities, within the Air Pollution Control District. Should not this same principle apply to public health law? This would then obviate the necessity of metropolitan areas being limited in health laws to those adopted by the State on the usual basis

that they are acceptable to the most rural counties.

Specifics of Laws

The Los Angeles swimming pool code setting details for construction and equipment was developed more than a dozen years ago at the request of the swimming pool industry. The industry pointed out that the requirement of the State law for approval of swimming pool plans by the health department did not actually result in good-quality construction because of lack of specificity in standards and lack of inspection during construction. With our detailed rules we are now regulating construction. It became necessary to establish the same kind of detailed, meticulous requirements and strict enforcement inspection that is applied by building, plumbing, electrical, heating, and ventilating inspection agencies. Unless willing to do this, we should probably turn over most of this inspection work to agencies which operate in this manner.

Also, it is fundamental that health requirements for plumbing, wiring, lighting, ratproofing, floors, walls, ceilings, septic tanks, and so forth, should be incorporated in building, plumbing, electrical, and related codes where these requirements are available to the engineers, architects, and contractors. Otherwise, health departments are in the unenviable position of having to request innumerable changes after building departments have already issued their permits and approvals for the building and equipment.

Informal Understandings

The legal limits to which a health officer may go in writing and enforcing interpretations of State laws and State requirements should be explored. Legal action or prosecution would, of course, be based on the law. Many policies, however, have resulted from informal understandings. In southern California, for example, such informal understandings have been developed in the last dozen years by a group of environmental health directors of several counties, called the Metropolitan Sanitation Directors. Without any legal authorization, this

group meets monthly and represents all health agencies in an area as large as some States, with a population of over 7 million. The sanitation directors in the group develop understandings and suggestions which are carried back to their health officers. As a result, requirements for industrial catering trucks, bakery distributors, meat distributing vehicles, and others that operate on an areawide basis are so standardized that health regulations impose no barrier between jurisdictions. Agreement is reached on such things as enclosure, insulation, and maintenance of food distribution trucks, labeling and dating of sandwiches, and refrigeration requirements and sanitation procedures at preparation headquarters. These understandings are reached regarding almost all sanitation requirements that are of areawide interest. Some health jurisdictions adopt formal codes or rules, but most are accepted or adopted as the health officer's interpretation and thereby become local policy without special legislation.

Precautions

Sometimes in the search for perfection so much detail is written into law as to make the requirements nearly unenforceable. For instance, after many months of work with the Los Angeles Agricultural and Livestock Advisory Committee, a comprehensive ordinance was adopted to require fly and nuisance control at poultry and animal premises. Many details were spelled out, such as drainage, cleaning, and frequency of removal of manure. While many details were covered, the ordinance lacked the legal "punch," and the courts did not convict alleged violators. Prosecution was then initiated under a simpler ordinance, which specifies that no person shall fail, refuse, or neglect to keep his premises free of "any accumulation of manure, garbage, offal, rubbish, stagnant water, or filthy or offensive matter of any kind, or any material which creates offensive or obnoxious odors or promotes fly breeding." Under this ordinance a defendant, previously acquitted, was sentenced to jail.

We thought that we had developed a good ordinance authorizing the health officer to make housing surveys and inspections and empower-

ing him to enforce various State and local housing laws. We used wording of the 1952 edition of the American Public Health Association Recommended Housing Code to detail responsibilities of owners and occupants. Prosecution under this ordinance was not successful because the court ruled that the ordinance simply placed duties of enforcement on the health officer without clearly requiring compliance by the citizen.

Development of Law

To supplement the basic laws and ordinances, detailed regulations are usually needed. These regulations form the basis of understandings between the inspection staff and the builders and operators who must comply, and they are best developed by full partnership between the health officials and persons expected to comply. Here is the place for the advisory committee to develop standards to control medical X-rays and other radiation standards for occupational health, water pollution control programs, swimming pool standards, food establishment rules, regulation of cross-connections, or any other program. Strangely enough, the supposedly traditional rivalry between the law enforcer and the person expected to comply does not exist when these groups work together. On the contrary, builders, designers, and operators want to improve their professions, to upgrade their businesses and products, and they usually are willing to go beyond what the official can or wants to adopt.

Another point for legal consideration is "fees for service." While many health officers argue that health is for all the people and therefore costs should be borne by the general fund, it should be realized that building inspection agencies are able to provide inspection staff to keep up with mushrooming growth of metropolitan areas because funds for their staff are supplied by inspection and permit fees. Health departments, by contrast, continue to be assigned more and more functions with less and less staff. This is one reason why septic tank inspections, regulations of water well construction, and supervision of housing are being transferred to other agencies that can charge fees to cover a substantial part of the cost of inspec-

tions. State laws should be reviewed to assure that county government has the authority to charge fees, not only in unincorporated territories but also in the cities for which the county provides health services.

Assignment of Responsibilities

To a large extent, health agencies assume too much responsibility for inspection and control. In some parts of the country, however, a great deal of the milk regulatory work is done by industry field men. Other jurisdictions have transferred only some of this responsibility to industry, such as having tank truck drivers pick up milk samples by approved, aseptic methods, thereby obviating the necessity for the milk inspector to make his midnight-to-early-morning run to precede the truck.

In Los Angeles we have had some success with certification of plumbers and others who perform required annual tests of backflow prevention devices and report results to the official

agency. By taking courses organized in night trade schools and by passing written and performance tests, plumbers and others are "certified" by the health officer to test and maintain these devices. Similarly, persons who commercially engage in maintaining swimming pools are certified by training, tests, and examinations established by local codes. Why should not pest control operators demonstrate that they are thoroughly familiar with basic sanitation requirements requisite to effect pest control? Might not our laws place responsibilities more squarely on operators of food establishments and institutions to maintain health standards? At present, is not too much stress placed on physical facilities and too little on the ability of persons to operate, maintain, and use these facilities properly? Could these questions be explored more fully from the legal standpoint?

Legal and health experts can gain much by exchange of ideas and information and thereby place environmental health programs on a more sound legal basis.